

Ray Roberts

March 10, 1998

IN THE DISTRICT COURT OF OTTAWA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel.,
THE OKLAHOMA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

MICHELIN NORTH AMERICA, INC.,
et al.,

Defendants.

Case No. CJ-95-641

**ORDER MODIFYING MANDATORY INJUNCTION AS TO
OTTAWA MANAGEMENT COMPANY, INC.**

This matter comes on before the Court on the joint oral application of Plaintiff, STATE OF OKLAHOMA ("STATE"), represented by C. Miles Tolbert, Assistant Attorney General, Intervenor, CITY OF MIAMI ("MIAMI"), represented by James W. Thompson, City Attorney, and Defendant, OTTAWA MANAGEMENT COMPANY, INC. ("OMCI"), represented by D. Kenyon Williams, Jr., Esq, to approve a settlement of the captioned case which results in this ORDER MODIFYING MANDATORY INJUNCTION AS TO OTTAWA MANAGEMENT COMPANY, INC. ("ORDER"). The parties acknowledge that STATE has been substituted as party Plaintiff, replacing State of Oklahoma ex rel., the Oklahoma Department of Environmental Quality.

STATE announces that it is applying for approval of this ORDER to conserve the resources of OMCI so that resources which might otherwise be expended contesting liability may be devoted instead to remedying the environmental problems at OMCI's facility in Miami. Oklahoma ("FACILITY"). Further, STATE announces that it does not intend by its approval of this ORDER to indicate that the remedial steps announced in this ORDER are adequate to address the

contamination at the FACILITY. Rather, STATE announces the remedial steps announced in this *ORDER* are not adequate to address all of the environmental conditions at the FACILITY, but represents instead only a partial remedy.

OMCI announces that it does not admit, and specifically denies, any liability to the STATE, MIAMI, or any other person or entity arising out of the allegations of the STATE and MIAMI in the present case. Further, OMCI announces that it does not intend, by its approval of this *ORDER*, to admit any facts, allegations, recitations, or conclusions of law alleged in the STATE's or MIAMI's Petition, or in this *ORDER*. Further, OMCI announces that it specifically denies any responsibility for remediation and disposal activities which it has voluntarily agreed to be ordered to perform with regard to the FACILITY and specifically denies any legal or equitable liability under any laws, regulations, ordinances, or common law for any costs or damages incurred by any party in connection with the said FACILITY. Finally, OMCI reports to the Court that, through October, 1997, OMCI has expended \$610,940 in its efforts to comply with this Court's Orders. STATE announces that it cannot confirm the accuracy of this figure.

STATE, MIAMI and OMCI announce to the Court that they have entered into a settlement of the captioned case agreeing to the following:

1. In consideration of OMCI's agreeing to this *ORDER*, STATE and MIAMI agree to dismiss with prejudice Case No. CJ-95-641 insofar as it pertains to Danny Wallis, a named individual Defendant in the present case.

2. In consideration of STATE's and MIAMI's agreeing to this *ORDER*, which modifies and replaces this Court's June 26, 1996 *Mandatory Injunction on Loose Asbestos* as to OMCI only, OMCI agrees to and shall perform the acts set forth hereinafter. For the purposes of applying and

interpreting this *ORDER*, STATE, MIAMI and OMCI ask the Court to use the following definitions:

First Definition: The term "asbestos containing materials" shall mean

"Any material that contains asbestos of one percent (1%) or more."

Second Definition: The term "seal" or "sealed" shall mean

"Close or cover all openings of the exterior walls or roof with impermeable materials (such as sheet metal) so as to prevent, to the extent reasonably practicable, unlawful or unauthorized entry and the release of asbestos fibers. With regard to doors, keep them closed and locked and install and/or maintain weatherstripping to the extent reasonably practicable taking into account the design of the door(s). 'Seal' or 'sealed' shall not mean air tight."

Third Definition: The term "FACILITY" shall mean

"All of the buildings, located on the real property which is the subject of this action, which are identified on the "FACILITY Diagram" attached to this *ORDER* and incorporated by reference."

Fourth Definition: The term "Powerhouse Building" shall mean

"That building, located on the real property which is the subject of this action, which is so identified on the "FACILITY Diagram" attached to this *ORDER* and incorporated by reference."

Fifth Definition: The term "Warehouse Building" shall mean

"That building, located on the real property which is the subject of this action, which is so identified on the "FACILITY Diagram" attached to this *ORDER* and incorporated by reference."

Sixth Definition: The term "Autoclave Area" shall mean

"That portion of the Warehouse Building, located on the real property which is the subject of this action, which is so identified on the "FACILITY Diagram" attached to this *ORDER* and incorporated by reference."

Seventh Definition: The term "Area 4" shall mean

"That portion of the Warehouse Building, located on the real property which is the subject of this action, which is so identified on the "FACILITY Diagram" attached to this *ORDER* and incorporated by reference."

Eighth Definition: The term "Demolition Debris" shall mean

"Those materials, including soil and associated Asbestos Containing Materials, located outside the FACILITY which were generated during demolition activities."

Ninth Definition: The term "Cooling Tower Pit" shall mean

"The pit, located just east of the Powerhouse Building, which consists of four, open-topped concrete tanks or cells."

Tenth Definition: The term "Rooftop Devices" shall mean

"Any equipment, tanks, or piping located on any roof of the FACILITY."

Eleventh Definition: The term "Significantly Damaged Asbestos Containing Materials" shall mean

"Asbestos Containing Materials that are so damaged that the materials cannot be repaired and maintained under OMCI's operations and maintenance of asbestos in place program."

11 Nov
by OGC
Rem
abate /
Remove

Based upon the foregoing, OMCI agrees to and shall perform the following acts:

A. With regard to the FACILITY, OMCI shall, according to the following schedule and subject to work plans approved by the State:

- i. Powerhouse Building and Autoclave Area of the FACILITY. Immediately seal and maintain in a sealed condition the Powerhouse Building and the Autoclave Area until such building or area are scheduled for recovery for commercial use and human occupancy.
- ii. Area 4 of the FACILITY: By April 1, 1998, either (a) erect a solid impermeable barrier in the East-West passageway of Area 4 to prevent workers from being exposed to asbestos fibers (in excess of

Oklahoma Department of Labor or OSHA permissible exposure limits) from the adjoining areas or (b) cease use of that passageway altogether.

- iii. Unoccupied Areas of FACILITY. Within three months of the date of this *ORDER*, seal and maintain in a sealed condition all unoccupied areas of the FACILITY.
- iv. Cooling Tower Pit. Within six months of the date of this *ORDER*, OMCI shall conduct appropriate analysis of the water which has collected in the Cooling Tower Pit and, with approval of STATE, lawfully dispose of the water. OMCI's water analysis results shall be provided to STATE at least 60 days prior to disposal of the water. After lawfully disposing of the water (or during the water disposal process) but in all events within six months of the date of this *ORDER*, OMCI shall remove and lawfully dispose of Asbestos Containing Materials found in the Cooling Tower Pit and then either (a) fill the Cooling Tower Pit with appropriate fill material so as to prevent the cells from filling with water, or (b) utilize the otherwise unregulated materials comprising the four cells as fill material for pits inside the Warehouse Building. OMCI's election to use otherwise unregulated materials from the cells as fill material is conditioned upon OMCI's demonstration to the STATE that it can be done lawfully and may only occur after the provisions of subparagraph xiv below have been complied with for each such pit.
- v. Powerhouse Building: Within nine months of the date of this *ORDER*, repair or remove and properly dispose of all loose or Significantly Damaged Asbestos Containing Materials within the Powerhouse Building and above the basement of the said building and seal the basement.
- vi. Demolition Debris: Within one year of the date of this *ORDER*, remove and lawfully dispose of all loose Asbestos Containing Materials (including soil) and Demolition Debris and remove and lawfully dispose of all Demolition Debris located outside the FACILITY. If OMCI demonstrates to the STATE that it can be done lawfully, otherwise unregulated concrete block and concrete debris may be used as fill material for pits inside the Warehouse Building, once the provisions of subparagraph xiv below have been complied with for each such pit.

7. What
is
the
cost?
So needs
O&M.
Check on
that.

vii. Autoclave Area: Within one year of the date of this *ORDER*, remove and properly dispose of all Asbestos Containing Materials that are located at or above the basement of the Autoclave Area and seal the basement.

viii. Carbon Black: Within one year of the date of this *ORDER*, remove and lawfully dispose of carbon black not lawfully stored or contained, with the exception of fugitive dust inside the *FACILITY* which will be addressed under ordinary maintenance. If OMCI demonstrates to the STATE that it can be done lawfully, otherwise unregulated soils collected in connection with the carbon black may be used as fill material for pits inside the Warehouse Building once the provisions of subparagraph xiv below have been complied with for each such pit.

So they can store carbon black.

Does this include autoclave basement?

ix. Rooftop Devices: Within eighteen months of the date of this *ORDER*, remove and lawfully dispose of all Asbestos Containing Material from any Rooftop Devices.

x. Asbestos Abatement: Within four years of the date of this *ORDER*, or thirty days prior to occupancy (whichever first occurs), remove and lawfully dispose of, or encase in concrete in place, all Significantly Damaged Asbestos Containing Materials from the interior of the *FACILITY*.

all (and at the facility).

xi. Powerhouse Building: Within four years of the date of this *ORDER*, or thirty days prior to occupancy (whichever first occurs), remove and lawfully dispose of all Asbestos Containing Materials from the interior of the Powerhouse Building which are not encased in metal jacketing.

What about elbows? Remove & dispose.

So, abate and do ERM. Would include basement.

xii. Temporary Onsite Storage of Abated Asbestos Containing Materials: For up to four years from the date of this *ORDER*, OMCI may temporarily store abated Asbestos Containing Materials (generated through OMCI's activities under this *ORDER*) in secure on-site location(s) approved by the STATE after OMCI has demonstrated that such storage is properly performed.

xiii. Offsite Disposal of Abated Asbestos Containing Materials: Within four years of the date of this *ORDER* or thirty days prior to occupancy of a storage area (whichever first occurs), remove and lawfully dispose of off-site all Asbestos Containing Materials stored pursuant to the preceding provision.

Does this include the powerhouse basement?

Angela agreed for powerhouse abatement and ERM.

- xiv. Pits in the FACILITY: Take representative samples and analyze liquids, sludges, and debris in the pits in the Warehouse Building and drain and lawfully dispose of the pit contents on the following schedule:

<u>Year</u>	<u>No. of Pits</u>
1	2
2	3
3	4
4	5

B. OMCI shall continue to satisfactorily perform its Oklahoma Department of Labor regulated "asbestos operations and maintenance program."

C. OMCI shall maintain continuously in force not less than \$4,200,000 fire and casualty insurance on the FACILITY. OMCI shall maintain the FACILITY and grounds in a lawful and commercially reasonable manner. The requirement that OMCI maintain an unoccupied area in a "sealed" condition, shall be relaxed during the time that unoccupied areas of the FACILITY are the subject of recovery or renovation projects.

D. OMCI shall provide notice to MIAMI, c/o the City Attorney, and to STATE, c/o the Attorney General of STATE, sixty (60) days in advance of the transfer of any portion of the south eighty (80) acres of the property which is the subject of this action.

E. OMCI shall make it a condition of any transfer of ownership, all or partial, or of operations of the property, which is the subject of this action, or of the FACILITY, that the transferee must assume all of OMCI's obligations under this ORDER. Such transfer shall not relieve OMCI of any of its obligations under this ORDER.

F. OMCI shall, by appointment, provide reasonable access to Michelin North America, Inc. and its contractors and to the STATE and its designees for the investigation and

remediation of environmental conditions at the FACILITY. Further, OMCI shall provide STATE reasonable access to the FACILITY for the purposes of: (a) inspecting the condition of the FACILITY and OMCI's activities pursuant to this *ORDER* and the results of such activities; (b) inspecting OMCI's records and contracts for work to be performed pursuant to this *ORDER*; (c) conducting such tests as STATE deems necessary to determine the environmental conditions of the FACILITY; (d) preserving an audio, visual, or other form of record of the environmental conditions of the FACILITY; and (e) verifying information provided by OMCI with regard to the environmental conditions of the FACILITY. OMCI shall allow STATE to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings generated for or in the course of OMCI's compliance with this *ORDER*, except with regard to matters which are protected by attorney-client privilege or attorney work product. Nothing contained in this *ORDER* shall be interpreted as limiting STATE's inspection authority under any state law. All STATE contractor(s) or representative(s) shall comply with OMCI's reasonable health and safety plans. All STATE contractor(s) or representative(s) shall so identify themselves when requesting access to the property.

3. With regard to OMCI and named individual Defendant Danny Wallis, STATE and MIAMI have waived, and the Court receives STATE's and MIAMI's dismissal with prejudice of, any claims which STATE and/or MIAMI have, as of the date of the entry of this *ORDER*, for enforcement or litigation costs, attorneys' fees, money damages, penalties and/or fines that have been or could have been asserted by STATE and/or MIAMI in the present action against named individual Defendant Danny Wallis. Nothing contained in this *ORDER* is intended or should be construed as limiting STATE's right or MIAMI's right in the future to assert penalties or fines

against OMCI for its intentional or negligent failure to comply with this *ORDER* or any obligation OMCI may in the future have toward the STATE or MIAMI.

4. Nothing contained in this *ORDER* shall be construed as or constitute an admission by OMCI or named individual Defendant Danny Wallis of liability or any set of facts that could lead to any liability pertaining to the claims alleged by STATE and/or MIAMI, nor shall anything in this *ORDER* be construed or constitute an admission that STATE and/or MIAMI is entitled to any relief based on such claims. This *ORDER* shall supersede and replace the provisions of the Agreement entered into by the STATE, MIAMI, and OMCI on the 3rd day of September, 1997.

5. Nothing contained in this *ORDER* shall be construed to relieve OMCI of its obligations to comply with any applicable provisions of local, state, or federal law including, but not limited to, the National Emission Standards for Hazardous Air Pollutants, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, or any state program thereunder. Notwithstanding the foregoing, OMCI shall not be responsible for any liability specifically or by inference assumed by either or both Defendant BF Goodrich and Defendant Michellin U.S.A. under their respective settlement agreements in this case.

6. This *ORDER* shall be binding on STATE, MIAMI, and OMCI and any third parties having actual or constructive notice of it. This *ORDER*, which modifies and replaces the Court's June 26, 1996, Mandatory Injunction on Loose Asbestos upon OMCI, shall terminate upon the Court's receipt of written notice from the STATE that OMCI has demonstrated that the terms of this *ORDER* have been satisfactorily completed. OMCI shall provide STATE with written notice of completion of the terms of this *ORDER* and STATE shall have one-hundred-twenty (120) days

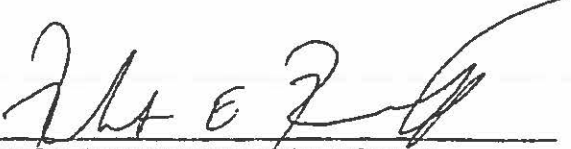
within which to provide the Court with written notice in the form of a release and satisfaction of the judgment which this *ORDER* represents. In the event a dispute arises with regard to whether OMCI has satisfactorily completed its obligations under this *ORDER*, either party may make application to the Court for such a determination.

7. If requested by the Court, STATE, MIAMI, and OMCI shall appear at such times as the Court directs for semi-annual status hearings until the parties have satisfied all of their obligations under this *ORDER*.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the settlement announced to the Court today, and agreed upon by the STATE, MIAMI and OMCI, and as fully set forth in this *ORDER*, is hereby approved.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED BY THE COURT, that this *ORDER* resolves all pending issues between Plaintiff, STATE OF OKLAHOMA, Intervenor, CITY OF MIAMI, and Defendant, OTTAWA MANAGEMENT COMPANY, INC., and that Defendant OTTAWA MANAGEMENT COMPANY, INC. is excused from further participation in the present case.

Dated this 10TH day of March, 1998.

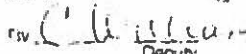


JUDGE OF THE DISTRICT COURT

State of Oklahoma }
Ottawa County }

I, Beverly Stepp, Court Clerk, do hereby certify that the above is a full, true and complete copy of the document in the above entitled case: Case No. 03-45-641 as the same remains on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said Court, of Miami, Oklahoma on the 10th day of March, 19 98
BEVERLY STEPP, Court Clerk


Deputy

APPROVED:

STATE OF OKLAHOMA

By: 

C. Miles Tolbert
Assistant Attorney General
Attorney for Plaintiff

CITY OF MIAMI

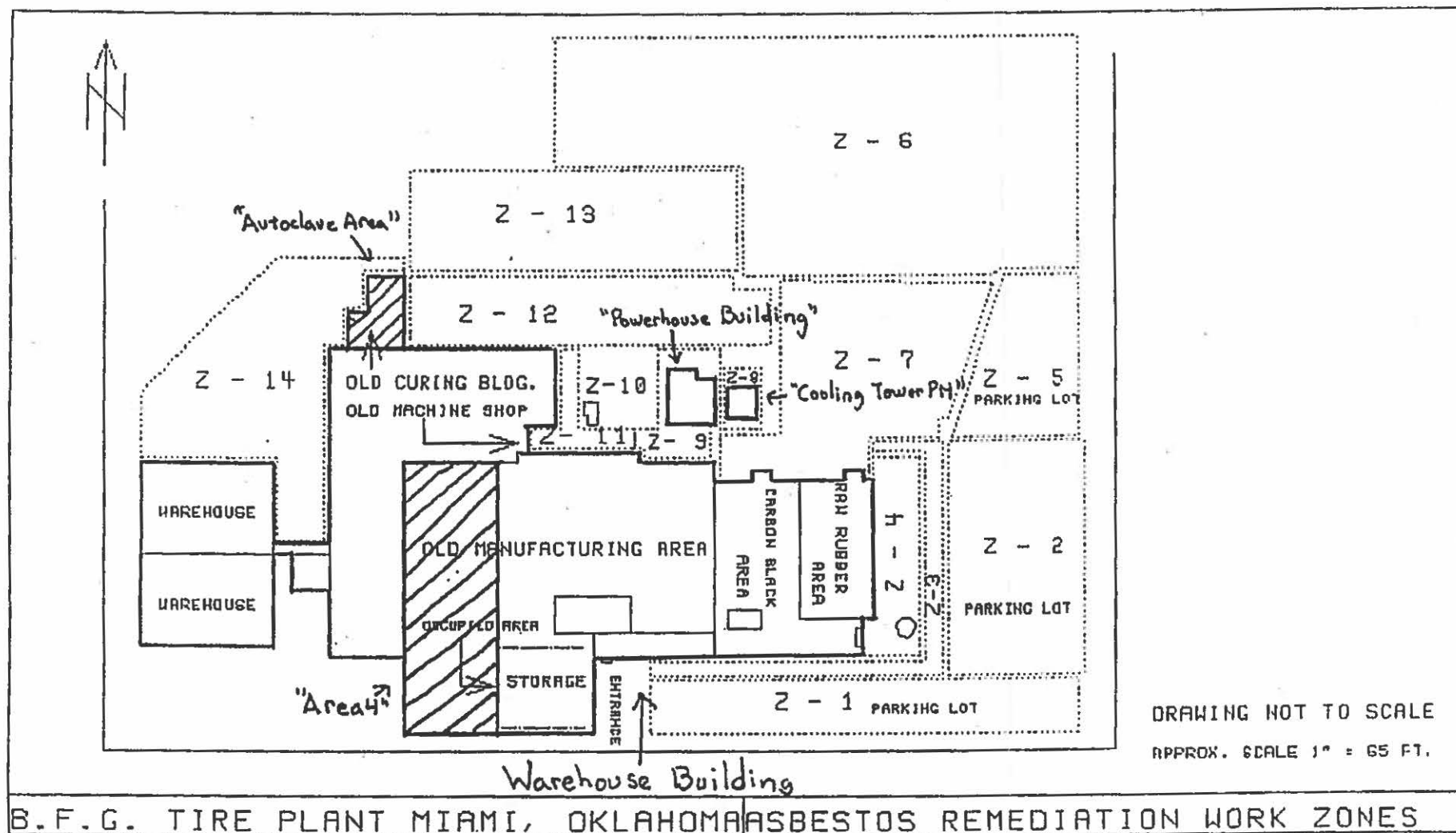
By: 

James W. Thompson
City Attorney
Attorney for Intervenor

OTTAWA MANAGEMENT COMPANY, INC.

By: 

D. Kenyon Williams, Jr., Esq.
Attorney for Defendant



Facility Diagram